



TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between **Managed Facilities Solutions, LLC**, (the "**Company**" or "**MFS**") and the "**Customer**". The following Terms and Conditions are deemed a part of all pick-up and/or delivery documents used by the Company in connection with the performance of all services for a Customer including, but not limited to all pick-up, packing, case and crate making, handling, installation and storage and such other services as the Company may offer. In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall be in addition to and not in lieu of those set forth herein except that should there be a conflict between the two then the Terms and Conditions in such other documents shall govern.

1. Definitions

(a) "**Company**" shall mean **Managed Facilities Solutions, LLC**, its subsidiaries, related companies, agents and/or representatives.

(b) "**Customer**" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. **It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;**

(c) "**Documentation**" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(e) "**Third parties**" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTI's, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise;"

(f) **United States Customs and Border Protection ("Customs")** shall mean an agency of the United States of America;

(g) Government "**Agencies**" shall mean all U.S. Governmental units other than Customs, or any state governmental agency having jurisdiction over MFS, Customer or the property of Customer.

(h) "**Entry**" when used herein refers to the process of having goods originating in a country other than the United States, enter into the United States by means of private or common carrier, and includes the compliance with all documentary and procedural requirements of Customs and any other governmental agency having jurisdiction over the movement of goods in and out of the United States;

2. Company As Independent Contractor. The Company only acts as an independent contractor and not as Customer's agent.

3. Limitation of Actions.

(a) Unless subject to a specific statute, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within sixty (60) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer or any other party claiming any rights through Customer including but not limited to Customer's insurance carrier.

(b) It is the sole responsibility of Customer and/or its agents to properly inspect all goods handled, stored or delivered by the Company immediately upon delivery by the Company to Customer or its agent. If any damage is found upon such inspection it must be duly noted on the delivery documentation of the Company at the time of delivery. The failure to include a description of such damage on such documentation shall be equivalent to a binding acknowledgement that all goods were delivered in good and satisfactory condition, free of any damage. Any subsequent claim of damage must be predicated upon the notation thereof on the Company's delivery documentation. The absence of any such notation of damage shall be conclusive evidence that all goods were delivered to Customer in good and satisfactory order and condition, free of any damage.

(c) With respect to Customer goods that are delivered to us or which we pick-up at the direction of Customer for delivery or storage, unless directed otherwise by Customer or unless the condition of the packing or crate indicates the likelihood that the goods may have been damaged, we will not unpack or uncrate such goods and will receive such goods as "unchecked" for delivery in the packing or crate in which they were received. If the Customer instructs us to repack or crate the goods for



delivery or export then, in such case, we shall unpack and inspect the goods immediately upon receipt at our warehouse or upon pick-up by our staff and any damage found will be duly noted at that time. The Company shall have no liability for any damage to goods that were received by us as “unchecked” or for damage noted by us at the time of delivery or pick-up.

(d) All suits against Company must be filed and properly served on Company as follows:

- (i) For claims arising out of ocean transportation, within one (1) year from the date of the loss;
- (ii) For those claims arising from air transportation, within two (2) years from the date of the loss;
- (iii) For any and all other claims of any other type, within two (2) years from the date of the loss or damage.

4. No Liability For The Selection or Services of Third Parties and/or Routes. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, the Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation and delivery of Customer’s goods; the advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does the Company assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents. The Company shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with an act of a third party shall be brought solely against such party and/or its agents and not the Company; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company in connection with such cooperation.

5. Quotations Not Binding. Verbal quotations as to fees, rates, freight charges, insurance premiums or other charges given from the Company to the Customer are for informational purposes only are not binding and are subject to change without notice; Quotation are not binding upon the Company unless set forth by the Company to the Customer in writing with our express agreement to undertake the handling and/or transportation and/or storage at a specific rate or amount set forth in the written quotation and payment arrangements are agreed to between the parties.

6. Duty to Furnish Information.

(a) For import Transactions at a reasonable time prior to the entry of goods into the U.S., the Customer shall furnish to the Company invoices in proper form and other documents necessary or useful in the preparation of the U.S. Customs entry and also such further information as may be sufficient to establish, inter alia, the dutiable value, the classification, the country of origin, the genuineness of the merchandise and any mark or symbol associated with it, the Customer’s right to import and/or distribute the merchandise, and the merchandise’s admissibility, pursuant to U.S. laws or regulations. If the Customer fails to furnish such information or documents in a timely manner, in whole or in part, as may be required to complete the U.S. Customs entry or comply with U.S. laws or regulations, or if the information or documents furnished are inaccurate or incomplete, the Company shall be obligated only to use its best judgment in connection with the shipment and in no instance shall be charged with knowledge by the Customer of the true circumstances to which such inaccurate, incomplete, or omitted information or document pertains. Where a bond is required by Customs to be given for the production of any document or the performance of any act, the Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond may have been executed by the Company as principal, it being understood that the Company entered into such undertaking at the instance and on behalf of the Customer, and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond.

(b) For an export transaction at a reasonable time prior to the exportation of the shipment the Customer shall furnish to the Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods. If the Customer fails to furnish such information in a timely manner in whole or in part, as may be required to complete the all export requirements of U.S. Customs and entry requirements of the country of destination, or if the information furnished is inaccurate or incomplete, the Company shall have no obligation whatsoever for any damages due to delays in shipment of the goods or for the cost of correcting the improper documentation provided by Customer and the Company shall be obligated only to use its best judgment in connection with the shipment and in no instance shall be charged



with knowledge by the Customer of the true circumstances to which such inaccurate, incomplete, or omitted information or document pertains.

(c) For an export or import transaction the Company shall not be responsible in any way or liable for increased duty, penalty, fine or expense unless caused by the negligence or other fault of the Company, in which event its liability to the Customer shall be governed by the provisions of these Terms and Conditions. The Customer shall be bound by and warrant the accuracy of all invoices, documents and information furnished to the Company by the Customer or its agent for export, entry or other purposes and the Customer agrees to indemnify and hold harmless the Company against any increased duty, penalty, fine or expense including attorneys' fees, resulting from any inaccuracy, incomplete statement, omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

7. Reliance On Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the Customs Service, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf;

(b) In preparing and submitting Customs entries, export declarations, applications, documentation and/or export data to the United States and/or a third party, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to insure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of any incorrect or false statement upon which the Company reasonably relied.

8. Declaring Higher Value to Third Parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefor; in the absence of written instructions from the Customer the Company shall be under no obligation to request excess valuation coverage. In the event of the refusal of the third party to agree to a higher declared value, at Company's discretion, absent contrary instructions from the Customer, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

9. Insurance. Unless requested to do so in writing and confirmed to Customer in writing, the Company is under no obligation to procure insurance on Customer's behalf. In all cases where insurance is requested by Customer, it shall be Customer's obligation to pay all premiums and costs in connection with procuring the requested insurance. Absent the specific request for insurance by Customer, and payment by Customer of all premiums associated therewith, the Company is under no obligation to provide any such insurance coverage and all rights of recovery for loss or damage are expressly limited to the terms set forth under Paragraph 10 herein. In any instance where the storage of Customer's property results in any increase in any of the insurance policies maintained by MFS as a "Warehouseman" to protect its Facility and its contents, including that belonging to its Customer's, it shall be the obligation of Customer to pay in addition to any other fees payable to MFS the amount of such increase.

10. Disclaimers; Limitation of Liability.

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;

(b) Subject to (d) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;

(c) In connection with all services performed by the Company, Customer may, as specified in Paragraph 9 above, obtain additional liability insurance coverage, up to the actual or declared value of the goods or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

(d) In the absence of additional coverage under (c) above, the Company's liability shall be limited to **\$50.00 per shipment or transaction or 60 (\$0.60) Cents per pound of weight of the lost or damaged article, whichever is greater, unless a different value per article is declared and the Company agrees to such rates in writing prior to performance of the services; or**



(e) In no event shall the Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, except where such damages or loss have been caused by the willful or malicious acts of the Company or any of its employees or agents;

(f) As set forth above, it shall be Customer's obligation to inspect, or have its agent inspect, all goods delivered by the Company at the time of delivery and to note on the Company's delivery documentation any damages to the delivered goods. Absent such notation of damage to Customer's goods, the Company shall have no liability with respect to any claim of damage to Customer's goods.

11. Joint Obligation to Pay Charges. Customer, upon tender by the Company of the shipment to carrier, and the consignee, upon acceptance of delivery of the shipment from the Company or a third party carrier, shall be liable, jointly and severally, for all unpaid charges payable on account of a shipment including, but not limited to, sums advanced or disbursed by the Company or a carrier on account of such shipment. The extension of credit to either shipper or consignee for such unpaid charges shall not thereby discharge the obligation of the other party to pay such charges in the event the party to whom credit has been extended shall fail to pay such charges. It shall be the obligation of the Customer to advise the consignee of the provisions of hereof.

12. Right to Store. If for any reason other than the fault of the Company, delivery cannot be made at address requested by customer, or at any changed address of which the Company has been notified, the Company, at its option, may cause such articles to be stored in a warehouse selected by it at the point of delivery or at other available points, at the cost of the owner, and subject to a lien for all accrued tariff and other lawful charges.

13. Advancing Money. All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; granting credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

14. No Responsibility for Governmental Requirements. It is the responsibility of the Customer to know and comply with the marking requirements of the United States, the regulations of the U.S. Food and Drug Administration, and all other requirements, including regulations of Federal, state and/or local agencies pertaining to the merchandise. The Company shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.

15. Damage to Premises. Company shall not be liable for any damages to the premises from which we retrieve Customers property or goods or to which such property or goods are delivered by us, unless caused by the gross negligence of the Company or our employees. In the event that such damage is caused by our sole negligence, our liability shall be limited to a maximum of \$50.00 in the aggregate for all such damage unless you have specifically included in our written contract that you wish us to arrange Property Damage Insurance. Any damage to premises must be noted in writing and in detail on our collection or delivery documents. Failure to note any damage to premises on our collection or delivery documents at the time of pick-up or delivery shall constitute a waiver of any right or claims to compensation for damage to the premises.

16. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the transportation, handling, storage or delivery of Customer's merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

17. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect" on "Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall have no liability if the bank or consignee refuses to pay for the shipment.



18. Costs of Collection. In any dispute involving monies owed to the Company by Customs, the Company shall be entitled to all costs of collection, including its reasonable attorney's fees and interest at 18% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company.

19. General Lien And Right To Sell Customer's Property.

(a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(b) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right, subject to any requirements of applicable Texas Law, to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

20. No Duty To Maintain Records For Customer. Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and §1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other laws and regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by statute(s) and/or regulation(s), but not act as a "record keeper" or "recordkeeping agent" for Customer.

21. Preparation and Issuance of Bills of Lading. Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall use the weight supplied by Customer.

22. No Modification or Amendment Unless Written. These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

23. Compensation of Company. The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

24. Severability. In the event any Paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

25. Governing Law; Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Texas, without giving consideration to principles of conflict of law. Customer and Company (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Texas; (b) agree that any action relating to the services performed by Company, shall only be brought in said courts; (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.